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May 15, 2012

By E-mail and First-Class U.S. Mail

Gary Schonman, Special Counsel
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, DC 20554

Re: FOIA Request Control No. 2012-305

Dear Mr. Schonman:

Google Inc. ("Google"), by its attorneys, hereby responds to the above-referenced FOIA request of MuckRock.com, as modified by your letter dated May 8, 2012 ("Request"). The Request seeks "substantive e-mails, letters, faxes, and other written or print communications from Google Inc. and its representatives (including legal counsel and outside public relations firms) to the FCC regarding the FCC's Street View investigation."

Google has agreed to the public release of the material that the Enforcement Bureau ("Bureau") has specifically identified as being non-confidential. In particular, the documents being released include information submitted by Google related to the collection of payload data broadcast from open and unencrypted Wi-Fi networks via Street View cars, which the Bureau confirmed had no commercial utility to Google and was not used in any product or service. Likewise, Google has agreed to the release of materials related to the fact of routine software-related actions by Google employees, as understood by the Bureau, and information that Google has publicly disclosed or that is otherwise publicly available.

Google's confidentiality requests focus primarily on two narrow areas, and the FCC has already granted Google's requests with respect to both. First, Google seeks to protect the personally identifying information (names, job titles, and the like) of those involved in the investigation. Second, Google seeks to protect information which, if released, could cause substantial competitive harm. These documents primarily focus on its use of Street View cars to collect street level images and network-identifying information about Wi-Fi networks for the purpose of providing location-based services. As the Bureau explained, unlike payload data which was not used in any product or service, "Google has used this information in its products

and services . . . , operates in a competitive environment, [and] . . . disclosure of this information would likely cause substantial harm to Google's competitive position."¹ Moreover, because these materials do not relate to the collection of payload, they would shed no light on that issue.

In light of the foregoing, Google objects to the disclosure of (i) any information that the Bureau already has determined is not subject to disclosure,² and of (ii) any information that is subject to Google's pending Application for Review of the Bureau Ruling, filed April 27, 2012 ("Application"), until issues raised in the Application are fully and finally resolved.³ In addition to material already granted confidential treatment by the Bureau, as discussed above, the Application only seeks to protect from disclosure commercial information that was provided in voluntary interviews and any personally identifying information in materials that Google provided to the Bureau. All of this information is entitled to non-disclosure pursuant to the Freedom of Information Act ("FOIA"). And as explained, materials that relate to the collection of payload or other matters that are not of competitive significance will be released.

FOIA Exemption 4 provides a statutory basis for withholding from public inspection "matters that are trade secrets and commercial or financial information obtained from a person and privileged or confidential."⁴ The Bureau granted Google's request for confidential treatment pursuant to Exemption 4 of certain material provided by Google in connection with this matter, finding that "disclosure of [such] information would likely cause substantial harm to Google's competitive position."⁵ This information is protected and may not be disclosed by the Commission.⁶

FOIA Exemption 7(C) provides that records or information compiled for law enforcement purposes are exempt from disclosure to the extent that the production of such records could reasonably be expected to constitute an unwarranted invasion of personal privacy.⁷ The Bureau granted Google's request for confidential treatment pursuant to Exemption 7(C) of

¹ Letter from Theresa Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, to E. Ashton Johnston, Esq., File No. EB-10-IH-4055 (Apr. 13, 2012) ("Bureau Ruling"), at 2.

² Bureau Ruling at 2, 4, and Exhibits A and B.

³ See Google Inc. Application for Review, File No. EB-10-IH-4055 (filed Apr. 27, 2012) ("Application for Review" or "Application").

⁴ 5 U.S.C. § 552(b)(4) ("Exemption 4").

⁵ Bureau Ruling at 2.

⁶ See *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1144 (D.C. Cir. 1987) (noting that a finding that materials fall within Exemption 4 is "tantamount to a determination that these agencies cannot reveal it."). See also *id.* at 1151-1152 (holding that the scope of the Trade Secrets Act [18 U.S.C. § 1905] is "at least coextensive with that of Exemption 4 of FOIA").

⁷ 5 U.S.C. § 552(b)(7)(C) ("Exemption 7(C)").

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certain material provided by Google in connection with this matter, finding that “personal information in Google’s responses and the supporting documents is and should be exempt from disclosure.”⁸ This information is protected and may not be disclosed by the Commission.⁹

Because the Commission is legally barred from releasing information covered by Exemptions 4 and 7(C), the Request must be denied under Section 0.461(f)(1) of the Commission’s rules with respect to the materials covered by the Bureau Ruling or the Application for Review.¹⁰

Finally, to the extent the Commission has any materials that are responsive to the Request, but that are not addressed by the Bureau Ruling or the Application for Review, Google asks that it be afforded an opportunity to review those materials prior to any disclosure by the Commission, so that Google may determine whether they contain information that is entitled to non-disclosure under FOIA or other federal laws. *See* 47 C.F.R. §§ 0.461(g)(3). Generally, Google requests that it be provided with a courtesy copy of any materials disclosed in response to the Request at the same time, or before, they are disclosed.

Please contact me should you have any questions regarding this matter.

Respectfully submitted,



E. Ashton Johnston
Joseph A. Bissonnette

Counsel to Google Inc.

cc: Michael Morisy, MuckRock News
gary.schonman@fcc.gov

⁸ Bureau Ruling at 4.

⁹ *See AFL-CIO v. FEC*, 177 F. Supp. 2d 48, 61 (D.D.C. 2001) (explaining that the D.C. Circuit “has established a *categorical* rule that an agency must exempt from disclosure the names of and identifying information about private individuals appearing in an agency’s law enforcement files unless that information is necessary to confirm or refute compelling evidence that the agency is engaged in illegal activity.” (emphasis in original)).

¹⁰ 47 C.F.R. § 0.461(f)(1).

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2012, I caused a true and correct copy of the foregoing Response to FOIA Request Control No. 2012-305 to be sent to each of the following by First-Class U.S. mail, postage prepaid, and by e-mail:

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